

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AMERICAN PILEDRIVING EQUIPMENT,)	2:08cv895
INC.,)	Electronic Filing
)	
Plaintiff,)	Judge David S. Cercone
)	Magistrate Judge Lisa Pupo Lenihan
v.)	
)	
EQUIPMENT CORPORATION OF)	
AMERICA,)	
)	
Defendant.)	

MEMORANDUM ORDER

The above captioned complaint was received by the Clerk of Court on June 27, 2008, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and former Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. After briefing the court on the matter, parties appeared before the Magistrate Judge on June 17, 2009, to argue their respective proposed constructions of five disputed terms in the claims of United States Patent No. 5,355,964 ("the '964 Patent"). On August 3, 2009, Magistrate Judge Lenihan filed a Report and Recommendation (Doc. No. 43), making recommendations regarding the proper construction of these disputed terms. Defendant Equipment Corporation of America ("ECA") timely filed Objections (Doc. No. 46) to the Magistrate Judge's Report on August 13, 2009. Plaintiff American Piledriving Corporation ("APE") filed a Brief in Opposition to ECA's Objections (Doc. No. 47) on August 24, 2009. This Court's review of the Report and Recommendation is *de novo*.

ECA's arguments in its Objections can be placed into two general categories. First, ECA argues that the Magistrate Judge applied an improper standard of deference to a prior construction of the disputed terms by the United States District Court for the Northern District of California. See Doc. No 46 at 5. Second, ECA argues that the Magistrate Judge analyzed the evidence before her in a manner that is contrary to the standard promulgated by the United States Court of Appeals for the Federal Circuit under Phillips v. AWH Corp., 415 F.3d 1303 (Fed. Cir. 2005) (en banc).

Upon independent review of the Record, and upon consideration of the Report and Recommendation, and the objections thereto, this Court has determined that the Objections raised by ECA are without merit. As such, the following order is entered:

AND NOW, this 19 day of October, 2009,

IT IS HEREBY ORDERED that the Report and Recommendation (Doc. No. 43) of Magistrate Judge Lenihan, dated August 3, 2009, is adopted as the opinion of the court.



David Stewart Cercone
United States District Judge

cc: Honorable Lisa Pupo Lenihan
United States Magistrate Judge

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